

1 THE HONORABLE JOHN C. COUGHENOUR
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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 MYRIAM ZAYAS,

11 Plaintiff,

CASE NO. C24-1613-JCC

v.

ORDER

12 CITY OF SEATTLE, *et al.*,

13 Defendants.

14

15 This matter comes before the Court *sua sponte*. On October 7, 2024, the Honorable Brian
16 A. Tsuchida, United States Magistrate Judge, granted Plaintiff's motion to proceed *in forma*
17 *pauperis*. (Dkt. No. 4.) Plaintiff's complaint (Dkt. No. 5) was entered shortly thereafter. Upon
18 reviewing the complaint under 28 U.S.C. § 1915(e)(2), the Court, amongst other things, ordered
19 Plaintiff to file an amended complaint establishing her standing in this matter through facts
20 supporting a cause of action pursuant to 42 U.S.C. § 1983. (*See generally* Dkt. No. 7.)

21 According to the Federal Rules of Civil Procedure, a complaint must include a short plain
22 statement of the grounds for the court's jurisdiction, along with a description of the claim
23 establishing that the plaintiff is entitled to relief and a description of the relief sought. *See Fed. R.*
24 *Civ. P. 8.* And because subject matter jurisdiction is a foundational issue, the Court must dismiss
25 a complaint any time it determines that it has no jurisdiction. *Fed. R. Civ. P. 12(h)(3); see Safe*
26 *Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004) (allegations must support the

1 court's subject matter jurisdiction).

2 In addition, as part of the case-or-controversy requirement, a plaintiff must establish that
 3 he or she has standing to bring suit in federal court. *See Lujan v. Defs. of Wildlife*, 504 U.S. 555,
 4 561 (1992). To establish standing, a plaintiff must demonstrate that his or her injury is “concrete,
 5 particularized, and actual or imminent; fairly traceable to the challenged action; and redressable
 6 by a favorable ruling.” *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 409 (2013) (citation
 7 omitted). An injury sufficient to convey standing must actually exist or be certainly impending.
 8 *See Spokeo, Inc. v. Robins*, 578 U.S. 330, 339 (2016); *Clapper*, 568 U.S. at 409.

9 Moreover, once a complaint is filed *in forma pauperis*, the Court must dismiss it before
 10 service if it is frivolous or “fails to state a claim on which relief can be granted.” 28 U.S.C.
 11 § 1915(e)(2)(b)(ii); *see also Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000) (en banc). To
 12 avoid dismissal, the complaint must contain sufficient factual matter, accepted as true, to state a
 13 claim for relief that is plausible on its face. *Ashcroft v. Iqbal*, 556 U.S. 662, 664 (2009). The
 14 factual allegations must be “enough to raise a right to relief above the speculative level.” *Bell*
 15 *Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). The complaint may be dismissed if it lacks
 16 a cognizable legal theory or states insufficient facts to support a cognizable legal theory. *Zixiang*
 17 *v. Kerry*, 710 F.3d 995, 999 (9th Cir. 2013).

18 The Court holds *pro se* plaintiffs to less stringent pleading standards than represented
 19 plaintiffs and liberally construes a *pro se* complaint in the light most favorable to the plaintiff.
 20 *Erickson v. Pardus*, 551 U.S. 89, 93 (2007). Nevertheless, section 1915(e) “not only permits but
 21 requires a district court to dismiss an *in forma pauperis* complaint that fails to state a claim.”
 22 *Lopez*, 203 F.3d at 1127. When dismissing a complaint under § 1915(e), the Court gives *pro se*
 23 plaintiffs leave to amend unless “it is absolutely clear that the deficiencies of the complaint could
 24 not be cured by amendment.” *Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir. 1995).

25 On November 14, 2024, Plaintiff filed what she described as an amended complaint. (*See*
 26 Dkt. No. 8.) It contains additional argument, allegations, and accusations (some of which take

1 issue with the Court), (*id.* at 1, 9), and a copy of the original complaint, (*id.* at 10–15). None are
 2 responsive to the Court’s prior order. The amended complaint fails to establish Plaintiff’s
 3 standing to assert claims relating to her adult son’s death. And even if it had, the amended
 4 complaint fails to state a claim brought pursuant to 42 U.S.C. § 1983.¹ Therefore, it does not
 5 establish this Court’s subject matter jurisdiction. Not does it state a claim for relief which this
 6 Court could provide.

7 Based on the forgoing, the Court DISMISSES Plaintiff’s complaint without prejudice and
 8 DENIES leave to further amend the complaint.²

9 DATED this 19th day of November 2024.



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 11 John C. Coughenour
 12 UNITED STATES DISTRICT JUDGE
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23¹ As before, it fails to provide facts supporting an Equal Protection violation; identify the person
 24 allegedly acting under the color of state law violating such right; or state the specific policy,
 practice, or custom implicating municipal liability for such a failure. *See generally* Dkt. No. 8.

25² Leave to amend need not be provided when doing so would be futile. *Barahona v. Union Pac.*
 26 *R.R. Co.*, 881 F.3d 1122, 1134 (9th Cir. 2018). Plaintiff’s unresponsiveness to the Court’s
 detailed order to show cause demonstrates her inability to effectively plead a colorable claim.